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# The "Deference to the Agency" Doctrine: To What Extent Should It Apply to the Customs Service's Interpretation of a Tariff Term in Classification Cases?

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# THE "DEFERENCE TO THE AGENCY" DOCTRINE: TO WHAT EXTENT SHOULD IT APPLY TO THE CUSTOMS SERVICE'S INTERPRETATION OF A TARIFF TERM IN CLASSIFICATION CASES?

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## I. THE "DEFERENCE TO THE AGENCY" DOCTRINE

To sustain an agency's interpretation of a statutory term it is entrusted to administer, a court need not find that the agency's interpretation is the only reasonable one, or even that the court would have reached the same conclusion if the question had first arisen within a judicial proceeding.[1] As stated by the Supreme Court, courts "are bound by the 'principle that the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong.'"[2]

> Hence, in cases which deal with the interpretation of statutes administered by an administrative agency, if the court determines that "Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction of the statute . . . ." Rather, the agency's interpretation is entitled to deference and the court must consider whether the interpretation of the administrative agency "is based on a permissible construction of the statute."[3]

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1. Chevron U.S.A. Inc. v. Natural Resource Defense Council, 467 U.S. 837, 843 n.11 (1984); Zenith Radio Corp. v. United States, 437 U.S. 443, 450 (1978); *see also* Young v. Community Nutrition Inst., 476 U.S. 974, 981 (1986); United States v. Rutherford, 442 U.S. 544, 555 (1979); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415-416 (1971).

2. Miller v. Youakim, 440 U.S. 125, 145 n.25 (1979) (quoting Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969)); *accord* Springfield Indus. Corp. v. United States, 842 F.2d 1284, 1285-86 (Fed. Cir. 1988); Knebel v. Hein, 429 U.S. 288, 294 (1976); Mourning v. Family Publications Service, Inc., 411 U.S. 356, 371-72 (1972); Udall v. Tallman, 380 U.S. 1, 16-17 (1965).

3. Central Soya, 15 Ct. Int'l Trade 105, 110 (1991), *aff'd*, 953 F.2d 630 (Fed. Cir. 1992) (citing Chevron U.S.A. Inc. v. Natural Resource Defense Council, 467

## II. RECENT DECISIONS FROM THE UNITED STATES COURT OF INTERNATIONAL TRADE INVOLVING THE "DEFERENCE TO THE AGENCY" DOCTRINE WHEN CLASSIFICATION IS AT ISSUE

In at least two recent decisions, the United States Court of International Trade (CIT) has suggested that deference to the Customs Service's (Customs) statutory interpretation in the context of classification issues may be contrary to the appropriate role of the court in these types of cases.

First, in *Sulzer Escher Wyss, Inc. v. United States*,[4] the court stated:

> In connection with construction of a valuation statute the Court of Appeals has held that *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* (citation omitted) applies, so that any permissible construction of the statute by Customs will control. *Generra Sportswear Co. v. United States* (citation omitted) (cited by defendant in closing argument). It is not clear to what extent this issue was seriously argued before that court. Congress may have intended a less deferential approach when a court established to have particular expertise is construing a statute within its assigned area of expertise. Furthermore, in construing tariff classification, as opposed to valuation, provisions, the court must often make factual determinations regarding the meaning of terms used in a particular industry. These factual determinations are made in a trial *de novo*. Deference to Customs' statutory interpretation in this context would violate the statutory scheme and decades of practice. Assuming *arguendo* that interpretation of the tariff provisions at issue by the Customs Service are entitled to any deference, in this case the interpretation is unreasonable and contrary to the structure of the HTSUS.[5]

Thus, in *Sulzer*, the CIT suggested that deference to Customs' statutory interpretation of a tariff classification term could be inappropriate for two reasons. First, the court implies

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U.S. 837, 843 (1984)); *see also* Generra Sportswear Co. v. United States, 905 F.2d 377, 379 (Fed. Cir. 1990) (Customs' interpretation of statute, as established by pertinent regulation, will be accepted if it is sufficiently reasonable).

4. No. 92-05-00325, 1993 WL 235511 (Ct. Int'l Trade June 22, 1993).

5. *Id.* at 4 n.6.

that the CIT has been entrusted by Congress with the unique responsibility of interpreting tariff schedules to the same extent as Customs has been entrusted the administration of this statute. The court insinuates that under these circumstances, the justification for applying the deference to the agency doctrine is weaker than in other areas where judicial review of an agency determination is allowed.

The court also implied that it may decline to defer to the agency in classification cases because in construing tariff classification provisions, the court makes de novo factual determinations regarding the meaning of terms used in a particular industry. Therefore, the court implies that, in classification cases, the CIT may reach its own conclusion as to the meaning of a tariff term, without having to ascertain whether Customs' interpretation is reasonable.

Notwithstanding the above, the court in *Sulzer* concluded that even if deference to the agency was appropriate, the interpretation propounded by the Customs Service in that case was unreasonable and contrary to the structure of the Harmonized Tariff Schedule of the United States (HTSUS).[6]

The second case in which the "deference to the agency" doctrine was discussed is *Semperit Industrial Products, Inc., v. United States*.[7] In *Semperit*, the court expressly found that deference to the Customs Service interpretation of a HTSUS provision was inappropriate in the context of tariff classification issues. The court stated:

> The court also rejects defendant's argument that the court should uphold Customs' classification because the agency based its classification on a reasonable interpretation of subheading 4010.91.15. Defendant's argument is meritless because it misconstrues the court's role in Customs classification cases. In such cases, the court conducts a trial *de novo*. Although Customs' decisions enjoy a presumption of correctness, the court's duty in reviewing classification determinations "is to find the correct result . . . ." Implicit in this function is the court's responsibility to exercise its own judgment as to what is the proper classification of the merchandise under review.
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> The role that Congress has assigned to the court in re-

6. *Id.*
7. 855 F. Supp. 1292 (1994).

> viewing Customs' classification decisions precludes the deferential standard of review urged by defendant. None of the cases cited by defendant requires a different result. Although the foregoing decisions are clearly relevant in antidumping and countervailing duty cases, the court finds the deference that the decisions mandate is inapplicable where, as here, Congress has charged the court with the responsibility of ascertaining the "correct result." Such deference is logically incompatible with the court's role in customs classification cases because the standard in these cases requires the court to reject any interpretation, however reasonable, that the court determines is incorrect. As a result, the court concludes deference in the customs classification context would necessarily and improperly subvert the court's statutorily-based review authority.[8]

The court in *Semperit* relied on the CIT's statutory authority to conduct a trial de novo, and the CIT's responsibility of ascertaining the "correct result" in classification cases as legal justifications for rejecting the deference doctrine.

## III. ARGUMENTS IN SUPPORT OF DEFERENCE IN CLASSIFICATION ISSUES

The following arguments support the conclusion that there is no basis for distinguishing classification cases from other actions involving the Customs Service's interpretation of a statute for purposes of applying the "deference to the agency" doctrine.

First, in adopting the HTSUS, Congress stated that "[t]he Customs Service will be responsible for interpreting and applying the [HTSUS]."[9] This language evidences that the Customs Service has been entrusted by Congress to administer the HTSUS. Absent a contrary indication by Congress, there is no basis to conclude that the legal principles set forth in *Chevron U.S.A. v. Natural Resource Defense Council,*[10] should not be applicable when the Customs Service makes a classification decision under that tariff schedule.

Second, in making decisions regarding the proper interpre-

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8. *Id.* at 1299-1300 (citations omitted).

9. H.R. REP. NO. 576, 100th Cong., 2d Sess. 549-50 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1582-83 (emphasis added).

10. 467 U.S. 837, 843 n.11 (1984).

tation of a tariff term, the CIT may be circumscribed to the specific merchandise at issue, and the facts presented by the parties in a particular action.[11] In addition to the specific merchandise at issue, the Customs Service, though, may take into account information regarding related merchandise and other tariff items, in an attempt to reach a consistent decision in light of the scope of other related tariff provisions. Even though the Customs Service may not always be successful, Customs ability to expand the scope of its investigation to other related matters places it in a better position than the CIT in ascertaining the probable administrative effect of interpreting a tariff provision in a certain way. The CIT has implicitly recognized the value of Customs' legal interpretations of tariff statutes when it examines or relies on the Customs Service's rulings to determine the proper scope of a tariff term.[12]

Third, the CIT's statutory authority to conduct a trial de novo in classification cases is not diminished by giving deference to Customs' interpretation of a statutory term. In a classification case, the CIT's jurisdiction is predicated on 28 U.S.C. § 1581(a) (1980), and as such, the CIT is required to make its determinations upon the basis of the record made before the court.[13] Ordinarily, this means that "the court itself will adjudge all factual issues de novo."[14] The meaning of a classification term, though, is a question of law.[15]

In granting deference to the agency, the CIT is required to grant deference to the Customs Service's legal interpretation of a tariff term. The factual determinations of the agency, while entitled to a presumption of correctness,[16] are not a legal in-

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11. *Cf.* Marubeni America Corp. v. United States, 821 F. Supp. 1521 (Ct. Int'l Trade 1993), *aff'd*, 1994 WL 495259 (Fed. Cir. Sept. 7, 1994).

12. *Cf.* Beloit Corp. v. United States, 843 F. Supp. 1489, 1502 (Ct. Int'l Trade 1994) (court declined to defer to Customs' classification decision when it was contrary to prior rulings because "an agency interpretation which conflicts with the same agency's earlier interpretation is entitled to considerably less deference than a consistently held agency view.").

13. 28 U.S.C. § 2640 (1980).

14. China Diesel Imports, Inc. v. United States, 855 F. Supp. 380, 385 (Ct. Int'l Trade 1994); *see also* ITT Corp. v. United States, 24 F.3d 1384, 1389 (Fed. Cir. 1994).

15. *E.g.*, Simod Am. Corp. v. United States, 872 F.2d 1572, 1576 (Fed. Cir. 1989).

16. In 28 U.S.C. § 2639(a) (1980), Congress provided that:

terpretation entitled to deference, and would be the subject of the trial de novo.

To the extent that the CIT makes its own factual determinations regarding common and/or commercial meaning, the court may then ascertain whether Customs' interpretation is reasonable in light of the common and/or commercial meaning of the statutory terms.[17]

Third, the United States Court of Appeals for the Federal Circuit (CAFC) has recognized that the doctrine of deference to the agency is applicable even in actions where the CIT is generally required to hold a trial de novo. For example, in *Guess? Inc v. United States*,[18] the CIT's jurisdiction was predicated on Customs' denial of a drawback claim, a decision that may be protested under 19 U.S.C. §1514(a). On appeal, the CAFC found that since Customs' definition of a statutory term, as established by the pertinent regulation, "was a reasonable construction of the statute and . . . consistent with Congress' intent, it [was] entitled to deference."[19] Notwithstanding, the case was remanded to the CIT because a "decisive fact" was in dispute, and the matter was thus not ripe for summary judgment.[20]

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(a)(1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under § 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

The plain language of § 2639(a) establishes that in any civil action challenging a decision of the Secretary of the Treasury or the administering authority, that decision is presumed correct, and the burden of presenting evidence to prove otherwise is upon the party challenging such decision. *See also* Stewart-Warner Corp. v. United States, 748 F.2d 663, 665 (Fed. Cir. 1984) ("burden of proving otherwise rests upon the challenger"). In classification cases, this has been generally interpreted to require that the classification decision, as well as facts needed for that classification to be correct, are presumed to be true.

17. *Cf.* Mitsui Foods, Inc. v. United States, 12 Ct. Int'l Trade 276, 281 (1988) (court afforded deference to reasonable interpretation of the National Marine Fisheries Service, as administrator of statute requiring reporting of quota level, of the phrase "United States pack" for purposes of determining proper tariff classification of imported tuna); *see also* Lotto U.S.A., Inc. v. United States, 12 Ct. Int'l Trade 187, 188 (1988) (where plaintiff's interpretation of the HTSUS had nothing to recommend it over the approach taken by the Government, the Government's interpretation prevailed).

18. 752 F. Supp. 463 (Ct. Int'l Trade 1990).

19. Guess? Inc v. United States, 944 F.2d 855, 858 (Fed. Cir. 1991).

20. *Id.*

In *Guess?*, the issue was not the proper scope of a tariff term, but rather the legal interpretation of a statutory term as established by a Customs regulation. Notwithstanding this distinction, upon remand, the factual issues in *Guess?* would have been the subject of a trial de novo, with Customs' interpretation of the statute being afforded deference, as required by the decision on appeal. Thus, the mere fact that a trial de novo should be afforded was insufficient to preclude the application of the deference doctrine.

Finally, the CIT's duty to find the "correct" classification under *Jarvis Clark v. United States*,[21] seems insufficient to conclude that deference to the agency in classification cases is inappropriate. The CAFC's admonishment to the CIT in *Jarvis Clark* is geared toward ascertaining that Customs' classification decision will not be sustained merely because the plaintiff has failed to demonstrate that the alternative classification advocated is correct. Thus, under *Jarvis Clark*, when the CIT finds that the merchandise has been incorrectly classified by Customs, the CIT is required to search for the "correct" classification, either on its own, or by remanding the matter to the Customs Service.[22]

Notwithstanding, this role does not necessarily require the CIT to disregard a permissible or reasonable construction of the tariff term and impose its own. Rather, the CIT may examine the alternative classification provisions, and Customs' interpretation of these provisions, if discernible, and ascertain which tariff provision must apply to the merchandise at issue.

## IV. CONCLUSION

The meaning of a classification term is a question of law, and the issue of whether particular imported articles come within the definition of a classification term is a question of fact.[23] Thus, the Customs Service's decision to classify a specific merchandise under a certain tariff provision involves a legal conclusion as to the scope of the provision, and a factual conclusion regarding the characteristics of the merchandise which make it fit within that scope. To the extent the CIT is

21. 733 F.2d 873, 878 (Fed. Cir. 1984).
22. *Jarvis Clark*, 733 F.2d at 880.
23. *E.g.*, Simod Am. Corp. v. United States, 872 F.2d 1572, 1576 (1989).

able to discern the Customs Service's legal interpretation of a tariff provision, and that legal interpretation "is based on a permissible construction of the statute,"[24] customs interpretation of a statutory term in the HTSUS should be afforded deference pursuant to the legal principles established by *Chevron*, and its progeny.

24. Central Soya, 15 Ct. Int'l Trade 105, 110 (1991).